

# Exhibit 40

## Sarah Stewart

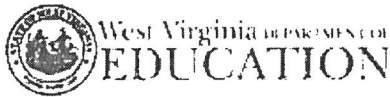
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**From:** Heather Hutchens  
**Sent:** Monday, March 15, 2021 10:53 AM  
**To:** Mary Catherine Tuckwiller; Sarah Stewart; Stephanie Abraham  
**Subject:** RE: Transgender participation in secondary schools bill

It seems like much ado about nothing. I don't think any of it is necessary.

Heather L. Hutchens

General Counsel  
Office of the State Auditor



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[f t t | YI](#)

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**From:** Mary Catherine Tuckwiller  
**Sent:** Monday, March 15, 2021 10:31 AM  
**To:** Sarah Stewart <sarah.a.stewart@k12.wv.us>; Heather Hutchens <hhutchens@k12.wv.us>; Stephanie Abraham <stephanie.abraham@k12.wv.us>  
**Subject:** RE: Transgender participation in secondary schools bill

At line 65, they convolute gender and sex when the focus throughout the bill seems to be sex – I realize the issue is when someone is transitioning genders but there is no prior reference in the bill to gender or sex – and the question, I suppose, is how will this issue arise?

Also will every student athlete produce a birth certificate now, and then they will call any suspect birth certificates into question, or will they only request from those who assert a transition? It says birth certificate that doesn't appear to be original – a child who is adopted by a step-parent won't have their original birth certificate. I would think for equitable application purposes everyone might need to produce one. Who is making the judgment call on the veracity of the birth certificate and who is evaluating the evidence? SSAC or the high school or the county board? I looked up some similar legislation in other states and it seems to dictate the student must obtain medical exam/confirmation based on these factors:

<http://billstatus.ls.state.ms.us/documents/2021/html/SB/2500-2599/SB2536IN.htm>

(3) If disputed, a student may establish his or her sex by presenting a signed physician's statement which shall indicate the student's sex based solely upon:

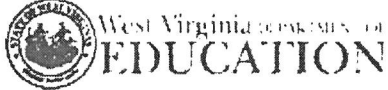
(a) The student's internal and external reproductive anatomy;

(b) The student's normal endogenously produced levels of testosterone; and

(c) An analysis of the student's genetic makeup.

**Mary Catherine Tuckwiller**

Attorney



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**From:** Sarah Stewart

**Sent:** Monday, March 15, 2021 9:49 AM

**To:** Heather Hutchens <[hhutchens@k12.wv.us](mailto:hhutchens@k12.wv.us)>; Stephanie Abraham <[stephanie.abraham@k12.wv.us](mailto:stephanie.abraham@k12.wv.us)>; Mary Catherine Tuckwiller <[mctuckwiller@k12.wv.us](mailto:mctuckwiller@k12.wv.us)>

**Subject:** FW: Transgender participation in secondary schools bill

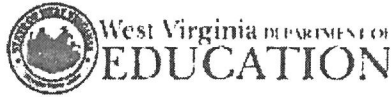
Happy Monday!

Would you all care to take a look at this one and provide feedback (preferably in writing)? Not necessarily on the substance, but modifications we would suggest. I have to leave for a funeral soon and not sure when will be back this afternoon.

Thanks,  
Sarah

**Sarah Stewart**

Government Affairs Counsel  
Superintendent's Office



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**FW: YI**

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**From:** Melissa White <[Melissa.White@wvhouse.gov](mailto:Melissa.White@wvhouse.gov)>  
**Sent:** Monday, March 15, 2021 9:44 AM  
**To:** Sarah Stewart <[sarah.a.stewart@k12.wv.us](mailto:sarah.a.stewart@k12.wv.us)>  
**Subject:** FW: Transgender participation in secondary schools bill

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Sarah,

Per our discussion.

Thank you,  
Melissa

Melissa J. White  
Chief Counsel  
Committee on Education  
West Virginia House of Delegates  
Room 432M  
1900 Kanawha Boulevard, East  
Charleston, WV 25305

**From:** Melissa White  
**Sent:** Thursday, March 11, 2021 9:53 AM  
**To:** Bernie Dolan <[bernie.dolan@wvssac.org](mailto:bernie.dolan@wvssac.org)>; Bernie Dolan <[bdolan@k12.wv.us](mailto:bdolan@k12.wv.us)>  
**Subject:** Transgender participation in secondary schools bill

Bernie,

Attached is a draft of an originating bill regarding transgender participation in sports. I kept it short: There are obviously certain things that would need to be handled in a rule, unless you have language that you would like to see in the bill. Please let me know your thoughts and if there are any unintended consequences. The Chairman does not want to keep girls from participating in boys sports when there are not girls teams.

Thanks,  
Melissa

Melissa J. White  
Chief Counsel  
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West Virginia House of Delegates  
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Charleston, WV 25305

**Sarah Stewart**

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**From:** Melissa White <Melissa.White@wvhouse.gov>  
**Sent:** Monday, March 15, 2021 9:44 AM  
**To:** Sarah Stewart  
**Subject:** FW: Transgender participation in secondary schools bill  
**Attachments:** Transgender originating bill.docx

[EXTERNAL SENDER]: Do not click links, open attachments or reply to this email unless you recognize the sender and know the content is safe.

Sarah,

Per our discussion.

Thank you,  
Melissa

Melissa J. White  
Chief Counsel  
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West Virginia House of Delegates  
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1900 Kanawha Boulevard, East  
Charleston, WV 25305

**From:** Melissa White  
**Sent:** Thursday, March 11, 2021 9:53 AM  
**To:** Bernie Dolan <bernie.dolan@wvssac.org>; Bernie Dolan <bdolan@k12.wv.us>  
**Subject:** Transgender participation in secondary schools bill

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Thanks,  
Melissa

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